

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35673

STATE OF IDAHO,)	2009 Unpublished Opinion No. 527
)	
Plaintiff-Respondent,)	Filed: July 10, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
JAMES C. ZELTNER,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Peter D. McDermott, District Judge.

Order revoking probation and requiring execution of unified six-year sentence, with two-year determinate term, for felony injury to a child, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before PERRY, Judge; GUTIERREZ, Judge;
and GRATTON, Judge

PER CURIAM

James C. Zeltner pled guilty to felony injury to a child. I.C. § 18-1506(1). The district court withheld judgment and placed Zeltner on probation for a period of four years. Zeltner violated the terms of his probation. The district court revoked Zeltner's withheld judgment and probation, entered a judgment of conviction, and imposed a unified sentence of seven years, with a minimum period of confinement of three years. However the district court retained jurisdiction and sent Zeltner to participate in the rider program. Thereafter, the district court again placed Zeltner on probation. Zeltner moved the district court for a modification of his probation terms, which the district court denied. Shortly thereafter, Zeltner again violated the terms of his probation. The district court revoked probation and ordered execution of Zeltner's sentence.

However, the district court also sua sponte reduced Zeltner's sentence to a unified term of six years, with a minimum period of confinement of two years. Zeltner filed an I.C.R. 35 motion for further reduction of his sentence, which the district court denied. Zeltner appeals, contending that the district court abused its discretion in revoking his probation.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion by revoking probation and ordering execution of Zeltner's modified sentence. Therefore, the order revoking probation and directing execution of Zeltner's previously suspended sentence is affirmed.